

REMARKS/ARGUMENTS

This Amendment is responsive to the final Office action dated February 11, 2009, setting forth a shortened three month statutory period for reply with a three month extension of time expiring on August 11, 2009. This response is submitted on August 11, 2009, and is submitted with a petition for a three month extension of time and a request for continued examination. After entry of this Response, claims 1-12, 14-31, 33-34, and 62 remain pending in this application, with claim 1 being an independent claim, claim 32 cancelled herein and claims 13, 35-61, and 63-64 previously cancelled.

I. Amendment to Claim 1

Claim 1 is amended herein not to narrow the scope of the claim, but rather to make explicit some aspects of the claim that were implicitly present, such as particularly describing the last interest paid date, and some additional aspects of the liquidation time value decision tree, and how the total debt estimation uses the estimated liquidation timing. Additionally, the claim is clarified to explicitly set forth hardware elements involved in a computer implemented method in compliance with section 101. These changes are not believed to narrow the scope of the claim and should not require a new search. Support for these changes are found throughout the specification such as at Fig. 1, pg. 18-24 (subsection B), and pg. 25 (subsection D).

II. Claim Rejections under 35 U.S.C. § 103

Claims 1-4, 9, 14-16, 18-34, and 62 are rejected under 35 U.S.C. § 103 as being unpatentable by U.S. patent No. 5,930,775 issued to McCauley et al. (hereinafter "McCauley et al.") in view of Official Notice (evidenced by U.S. patent publication No. 2001/0042034 A1 to Elliott (hereinafter "Elliott"). Claim 17 is rejected under 35 U.S.C. § 103 as being unpatentable by U.S. patent No. 5,930,775 issued to McCauley et al. (hereinafter "McCauley et al.") in view of Official Notice further in view of Sellers.

A. McCauley is insufficient to disclose the liquidation time value decision tree aspects of Independent claim 1

Independent claim 1 is amended herein to recite particulars of the operation of obtaining an estimated liquidation time through application of a liquidation time value decision tree. More particularly, claim 1 is amended herein to require "obtaining an estimated liquidation time between a last interest paid date for the loan and a receipt of the estimated net proceeds from the sale of the property after a foreclosure of the loan, the last interest paid date being the last

date that a payment was received on the loan before entering foreclosure, wherein the operation of obtaining the estimated liquidation time includes applying a liquidation time value decision tree, wherein the liquidation time value decision tree includes a plurality of time factors that account for the time associated with various events that effect the liquidation time for the loan, the application of the liquidation time value decision tree including summing each time factor applicable to the loan." It is respectfully submitted that McCauley does not disclose or suggest provision of a liquidation time value decision tree in the manner claimed. Indeed, McCauley teaches against the notion, stating "to estimate the foreclosure fees and costs, the system examines a table in a loan experience database 352 for historical average foreclosure fees and costs for the state in which the subject property is located. The system uses these average fees and costs to compute the REO option." *See McCauley, col. 8, lines 22-26.* Hence, McCauley cannot use a liquidation time value decision tree that includes a plurality of time factors that account for the time associated with various events that may effect the liquidation time for the loan because McCauley uses historical average values. Stated differently, McCauley uses average values for a geographic region to calculate fees and costs, whereas claim 1 calculates liquidation timing for a particular loan based on time factors in a liquidation time value decision tree applicable to a particular loan. Hence, for at least these reasons, McCauley does not disclose obtaining an estimated liquidation time as set forth in claim 1.

B. Official Notice as evidenced by Elliot is insufficient to support the rejection of claim 1

The Office action relies on Official Notice evidenced by Elliot to support the notion that executing preceding operations, obtaining estimated total debt, and deriving difference for plurality of additional loans from pool of loans is an old and well known in the banking industry as a convenient way for company or individual to evaluate and reduce credit risk for certain loans. Firstly, the claim is directed toward "applying the estimated financial outcome from the sale of the property associated with the loan and the plurality of additional loans to yield the *estimated financial outcome for the pool.*" Neither McCauley nor Elliot is concerned with obtaining an estimated financial outcome for a pool of loans based on an analysis of individual loans in the pool, where the analysis based in some part on estimates related to foreclosure timing (e.g., estimated the liquidation timing). Hence, for at least the reason, Official Notice is insufficient to support the rejection of claim 1.

Secondly, and perhaps more significantly, the Office action cites to paragraphs 0004, 0027, 0033, 0038-0045, 0191 and 0207 and 0218 of Elliot as evidence in support of the Official Notice aspects of the rejection. The claim is directed toward the specified steps of the method to derive an estimated financial outcome for a loan in foreclosure. The method then repeats the operations for other loans to obtain an estimated financial outcome for a pool of loans. The Elliot reference deals with notions of securitizing an intellectual property portfolio, not a securitized portfolio of real property that can proceed through foreclosure. Paragraph 4 of the background section of Elliot discusses the general notions of real property valuation based on published specifics of real estate transactions, and also discusses the general notion of securitizing mortgage loans. It does not discuss obtaining an estimated financial outcome for a pool of loans in the way claimed. The remaining cited paragraphs of Elliot discuss intellectual property valuation methods, none of which discuss or refer to the notion of "executing the preceding operations of obtaining an estimated value, obtaining an estimated net proceeds, obtaining an estimated liquidation time, obtaining an estimated total debt, and deriving the difference for a plurality of additional loans from the pool of loans; and applying the estimated financial outcome from the sale of the property associated with the loan and the plurality of additional loans to yield the estimated financial outcome for the pool" as set out in claim 1.

Hence, for at least these reasons, Elliot is simply insufficient to provide evidence to support the aspects of claim 1 where Official Notice is relied on by the Office. For this additional reason, claim 1 is patentable over the cited references and Official Notice.

C. Dependent claims 14-16 and 18-25

Dependent claims 14 – 25 all describe specific details associated with the liquidation time value decision tree introduced in independent claim 1. The Office action relies on various passages of McCauley to disclose these various time factors. The referenced dependent claims are patentable over the combination of McCauley and Official Notice as McCauley does not disclose any aspects of the liquidation time value decision tree as specified in the referenced dependent claims.

Firstly, McCauley simply does not disclose a liquidation time value decision tree for at least the reasons set forth above with respect to claim 1. Hence, McCauley cannot be sufficient to disclose the various elements of claim 14-25.

Secondly, none of the relied upon passages of McCauley to disclose the elements of claim 14-25 address the determination of time factors involved in liquidation timing in any way.

For example, the Office action relies on column 1, lines 25-30 to reject claims 14, 15, and 24. However, the information at column 1, lines 25-30 simply has nothing to do with factors of a liquidation time value decision tree used in obtaining an estimated liquidation timing. Rather, the information at lines 25-30 describes the notion of lender payments involved in satisfying a loan obligation.

In another example, the Office action relies on column 2, lines 19-26 to reject claims 1, 14, 15, 16, 18, 19, 20, 22, 23, and 24. The passage of McCauley set forth at lines 19-26 generally discusses certain aspects of loan modification. The passage does not discuss estimation of liquidation timing at any level, and certainly does not discuss the various particular liquidation time value decision tree details set forth in independent claim 1, nor dependent claims 14, 15, 16, 18, 19, 20, 22, 23 and 24.

The Office action relies on column 11, lines 1-7 to disclose elements of claims 14 and 15. However, this section of McCauley discusses aspects of comparing the savings of pursuing a loan modification versus REO. Nothing in this section describes use of a liquidation time value decision tree generally or the particulars of obtaining a liquidation timing factor associated with a payment plan.

The Office action relies on Fig. 6 and the Abstract as evidence to support a rejection of nearly all of dependent claims 14-16 and 18-25, with the exception of claim 18 (Fig. 6, not Abstract), claim 20 (Fig. 6, not Abstract) and claim 24. For the REO (foreclosure case), Fig. 6 identifies a total days in process value. However, McCauley explicitly states that the estimates related to foreclosure are based on historical average values obtained on a state by state basis. Hence, assuming arguendo, that the total days in process value involves liquidation timing to some extent, it is not based on a liquidation time value decision tree but rather on historical average values. Moreover, nothing in Fig. 6 explicitly identifies any of the liquidation time value decision tree factors set forth in the referenced dependent claims. The Abstract simply describes at a high level the notion of determining an optimal investment plan for distressed loans; the Abstract does not reference a liquidation time value decision tree nor any of the particulars of the dependent claims.

With respect only to claim 15, the Office action relies on col. 8 lines 22-60 to disclose the elements of claim 15. The information at column 8, lines 22-60 does not reference a payment plan nor does it reference any form of time factor to account for a payment plan as such relates to a liquidation time value decision tree. Indeed, the information at column 8, lines 22-60

supports the contention that McCauley does not disclose a liquidation time value decision tree in any form, as this section of McCauley discusses use of historical averages.

With respect to claims 16 and 18, the Office action relies on column 3, lines 1-31, column 5, lines 1-33, and column 7, lines 1-8 in rejecting the claims. These sections of McCauley do not describe any form of liquidation time value decision tree nor the particulars of claims 16 and 18. Column 3, lines 1-31 describe steps in selecting a business plan to cope with nonperforming loans. The steps do not seem to disclose any form of liquidation time value decision tree. Column 5, lines 1-33 simply do not discuss any aspects of a liquidation time value decision tree nor the particulars of time factors associated with bankruptcy or litigation. In fact, neither bankruptcy nor litigation are mentioned. Finally, col. 7, lines 1-8, does not provide any information related to liquidation timing, a liquidation time value decision tree nor the particulars of time factors associated with bankruptcy or litigation.

With respect to claim 18, the Office action also relies on col. 8, lines 39-47, and with respect to claim 19, relies generally on cols. 7-8. The information set out in columns 7-8 does not address estimation of liquidation timing involving a time value decision tree, nor the particulars of setting a time factor of the time value decision tree to account for litigation. Col. 8, lines 39-47 does mention attorney fees, but it is in the context of foreclosure and the costs if foreclosure is terminated due to a short payoff. This section does not address litigation timing and its impact on liquidation timing.

With respect to claims 20 and 21, the Office action also relies generally on columns 3-8. Claims 20 and 21 address time factors to particularly account for foreclosure of a particular loan. While columns 3-8 certainly discuss notions of foreclosure proceedings in various areas, there is no discussion of liquidation timing and the use of liquidation time value decision tree with a time factor specifically accounting for foreclosure timing, let alone 12 months specifically. Indeed, as discussed elsewhere, at col. 8, line 22-25, it is specifically stated that the system uses historical average foreclosure fees and costs, which does not involve a liquidation time value decision tree.

With respect to claims 22 and 23, the Office action relies on column 7, lines 52-67 to disclose various notions of the establishment of a time factor to account for bankruptcy proceedings. This section of McCauley simply describes a database and the fact that it contains information related to expected costs associated with foreclosures based on historical averages, and other information. Nowhere does this section even mention bankruptcy

proceedings, let alone the particulars of how bankruptcy timing effects liquidation timing and how such might be used in a liquidation time value decision tree.

For at least all of these reasons, neither McCauley nor Official Notice is sufficient to disclose the features of the referenced dependent claims. Hence, besides the dependent claims being allowable for at least the same reasons as independent claim 1, these dependent claims are allowable for all the additional reasons set out above.

D. Dependent claim 17

The rejection of claim 17 correctly recognizes that McCauley does not describe any of the particular bankruptcy time factors set forth in the claim. The Office action indicates, however, that it would be obvious to add these features to McCauley because Sellers teaches that adding the features help to provide a system for automatically obtaining workout approval.

Firstly, McCauley does not describe a liquidation time value decision tree, and in some sense teaches against its use as the McCauley database only uses historical average fees. Secondly, even if one wanted to employ a liquidation time value decision tree with McCauley, such would not be possible without significant modification to include all of the information to employ a liquidation time value decision tree.

Thirdly, the Office action finds motivation in using bankruptcy time factors of claim 17 in combination with McCauley based on helping to provide loan workout approval as taught by Sellers. McCauley, however, is not concerned with loan workout approval. Hence, one of ordinary skill would not be motivated to modify McCauley to help provide loan workout approval as McCauley simply does not involve loan workout approval.

Finally, neither McCauley nor Sellers actually disclose the particulars of the bankruptcy time factors described.

Hence, for at least these reasons, alone or collectively, claim 17 is patentable over the combination of McCauley, Official Notice, and Sellers.

E. Dependent claims 2-12, 26-31, 33-34, and 62

Dependent claims 2-12, 26-31, 33-34, and 62 depend directly or indirectly from claim 1, and are rejected based on McCauley, Official Notice (evidenced by Elliot), as well as some combination with May in some instances. It is respectfully submitted that these dependent claims are patentable over the cited references for at least the same reasons as the independent claims and such indication is respectfully requested.

II. Conclusion

After review and consideration of the above arguments, claims 1-12, 14-32, 33, 34, and 62 remain in the application. In accordance with the arguments set forth herein, the Assignee respectfully submits the application and all pending claims are in condition for allowance and requests such prompt allowance.

A petition for a three month extension of time and Request for Continued Examination ("RCE") accompany this Amendment and Response. Accordingly, please charge Deposit Account number 04-1415 in the amount of \$1,920.00 for the three month extension of time and the RCE fee. The Assignee believes no further fees or petitions are due with this filing. However, should any such fees or petitions be required, please consider this as authorization therefor and please charge such fees to Deposit Account number 04-1415.

If the Examiner should require any additional information or amendment, please contact the undersigned attorney.

Respectfully submitted,

Date:

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By



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